

Remarks

Reconsideration of the application is urged in view of the amendments above and comments which follow.

I – Claim amendments

In reply to section 5 of the office action

It is respectfully submitted that it was not intended that claim 1 be directed to non-statutory subject-matter. Applicant is not claiming a person's limb, but rather a device that provides motion to a limb.

To overcome the Examiner's rejection, all relevant occurrences in the claims have been amended, e.g. "said limb" to "the limb", "said distal end" to "the distal end", "said first joint" to "the first joint" and "said second joint" to "the second joint". In other US-patents, related to braces and alike, terms as 'the head', 'the knee', "the thigh" and "the arm" are used (see, for example, US6878126, US6716185, US6565523, US6470507).

An amended set of claims is set forth above.

II – Clarity issues

In reply to sections 6 and 7 of the office action

It is submitted that the amended claims now render mute the objection to lack of antecedent basis of 'the torso'.

III – Novelty and obviousness issues

In reply to section 1 of the office action

It is noted that the Examiner refers to previous rejections under 35 USC §102(b), whereas in the previous office action of April 18, 2005, rejections were made under 35 USC §103(a). Applicants address the objection to the intended use not having any patentable weight below

as well as anticipation and obviousness. The Examiner is respectfully requested to clarify the rejections if this is insufficient.

In reply to sections 1 to 4 of the office action

It is respectfully brought to the Examiner's attention that the amendments, directed to an intended use as were made in the previous reply, are to be considered as having patentable weight.

As recited in the body of the claim a settable continuous passive motion of the first joint and/or the second joint of the limb is provided which is a further development of the preamble feature relating to "providing continuous passive motion of a limb". It is well accepted that a feature of a preamble is limiting if this feature is developed further in the same claim or in a dependent claim.

Also, from MPEP 2111.02 – II – second paragraph, it is clear that an intended use has patentable weight. MPEP 2111.02 – II – second paragraph says that *"During examination, statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or intended use results in a structural difference (or, in the case of process claims, manipulative difference) between the claimed invention and the prior art. If so, the recitation serves to limit the claim."*

The amendments as made in the reply to the office action of April 18, 2005 results in a structural difference of the claimed invention with respect to at least US5738636.

US5738636 relates to continuous passive motion (CPM) induced to human wrists or ankles. US5738636 does not relate to CPM of the first joint (between distal end and proximal end) and/or second joint (between proximal end and torso), as in the present claims. Hence the intended use is to be understood as limiting the claim, thus having patentable weight.

The arguments on novelty and non-obviousness as set out in the reply to the previous office action of April 18, 2005 remain valid with regard to the set of amended claims above.

Furthermore, it is respectfully brought to the Examiner's attention that US 5,738,636 does not disclose a device for providing a CPM, having a first control point and a second control point. Both control points are to control the movement of the limb in general and the distal end of the limb in particular, and both control points were independent from each other. This is made clear in the application on e.g. page 11 lines 9-12, page 11, lines 14-16 and on page 11, lines 20-22, where different movement controls for the control points are described.

US 5,738,636 discloses a device which has only one control point, i.e. the hand grip, which provides control of the movement for training the joint, more particularly the wrist.

The use of control of movement by two control points on the distal end of the limb, the control of movement being independent for both control points, allows to provide CPM exercises for separately exercising e.g. the elbow or the shoulder, without the need to exercising the other joint at the same time, which can be advantageous for medical reasons. Alternatively, however, the use of control of movement by two control points on the distal end of the limb, the control of movement being independent for both control points, allows exercising both elbow and shoulder at the same time.

The system as subject of the present invention allows to perform alternative exercises of the limb, which is not possible using the device of US 5,738,636.

Another advantage of the system of the present invention is that due to the control of movement using two control points on the distal end of the limb, a system can be provided that does not introduce stress points on e.g. an injured shoulder.

US 5,738,636 does not teach nor suggest the use of two control points on the distal end of the limb for controlling, independently, the CPM movement. Nor is there any other cited prior art reference that suggests such provision of two control points to provide CPM to a first joint and/or a second joint of the limb, the first joint coupling the distal end to the proximal end of the limb, the second joint coupling the proximal end of the limb to the torso.

Therefore, it is believed the present claims are new and not obvious over prior art.

IV - Conclusion

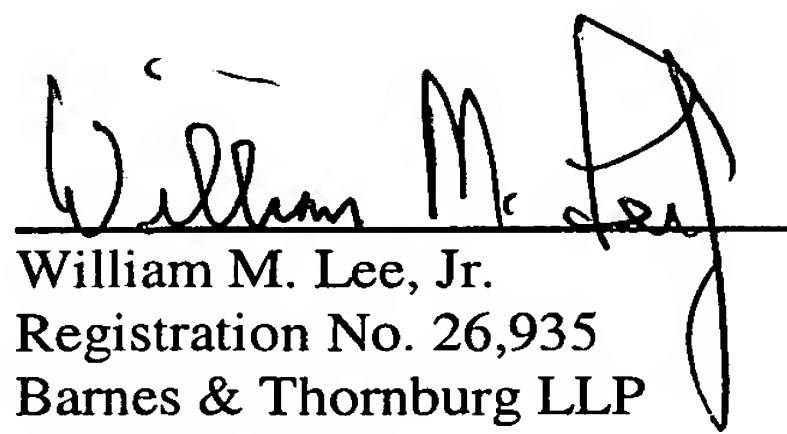
The amended claims take into consideration the Examiner's remarks. The applicants believe the amended set of claims as filed herewith is allowable and an early grant of a patent is therefore requested.

As this response is being filed during the sixth month following the Examiner's Office Action, an appropriate Petition for Extension of Time and the necessary fee are also submitted herewith.

Further action is awaited.

May 15, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William M. Lee, Jr.", is written over a horizontal line.

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